

Hearing Date: June 22, 2020 at 9:30 a.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In Re

Chapter 13
Case No.8-19-76720-reg

ROBERT F. KELLY

Debtor
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OBJECTION TO MOTION FOR RELIEF FROM STAY FILED BY BAYVIEW LOAN SERVICING LLC

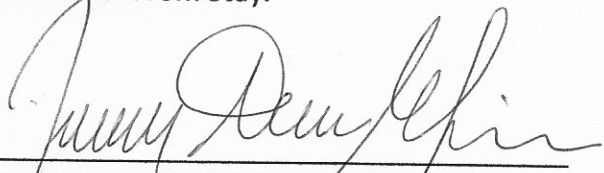
The Debtor ROBERT F. KELLY, through his attorneys JEFFREY ARLEN SPINNER ESQ. and SPINNER & SPINNER P.C., hereby objects to the Motion For Relief From Stay that has been filed by BAYVIEW LOAN SERVICING LLC ("BAYVIEW") and respectfully sets forth as follows:

1. The Debtor ROBERT F. KELLY filed this voluntary Chapter 13 case on September 28, 2019.
2. Bayview is a secured creditor of the Debtor by virtue of a Note and Mortgage executed by the Debtor on April 3, 2006 in the original principal amount of \$ 266,500.00. The Mortgage is a first lien which encumbers the Debtor's residence located at 1908 Julia Goldbach Avenue, Ronkonkoma, Town of Islip, New York.
3. Prior to the filing of this Chapter 13 proceeding, Bayview had commenced an action to foreclose the mortgage, under Suffolk County index no. 2017-609284. A Judgment of Foreclosure & Sale was entered by the Supreme Court on February 5, 2019.
4. The Debtor's monthly mortgage loan installment payment is \$ 2,432.53, of which the sum of \$ 1,583.12 is allocated toward payment of principal and interest while the remainder is allocated toward payment of escrow impounds.
5. According to the Debtor, he has been remitting post-petition monthly payments to Bayview in the amount of \$ 2,432.53, which payments have been both accepted and retained by Bayview. The Debtor has provided my office with proof of several of these payments in the form of cancelled checks.
6. A review of Bayview's moving papers reveals the assertion by Bayview that the Debtor's monthly mortgage loan installment is in the amount of \$4,433.48. The Debtor verily believes that this assertion is erroneous.
7. First, Bayview has accepted and retained, without any protest whatsoever, the Debtor's monthly post-petition remittances in the amount of \$ 2,432.53.

8. Second and more important, the Proof of Claim that was filed by Bayview in this Chapter 13 proceeding (Claim no. 2, filed on December 5, 2019) asserts that the Debtor's monthly mortgage installment payment amount is \$ 2,433.48. The Proof of Claim contains an attachment which appears to be an account history and it reflects monthly installments due in substantially similar amounts. Presumably, the differences are attributable to changes in the amounts payable for property taxes and homeowner's insurance.
9. The Proof of Claim also states, in pertinent part, that *"I have examined the information in this Proof of Claim and have a reasonable belief that the information is true."* and further, that *"I declare under penalty of perjury that the foregoing is true and correct."* The Proof of Claim was executed by one Josephine E. Salmon, an agent for Bayview.
10. Nowhere is any explanation advanced for this discrepancy in the monthly installment payment amount, which is in excess of \$ 2,000.00.
11. Since Bayview's duly filed Proof of Claim asserts, under penalty of perjury, that the monthly installment payment amount is \$ 2,433.48 (which clearly appears to be supported by the account history), Bayview should be estopped from now claiming that the monthly payments have increased by over \$ 2,000.00.
12. In light of the foregoing, Bayview's Motion For Relief From Stay should be denied.

WHEREFORE the Debtor respectfully requests that this Court sustain his objection as set forth herein and deny, in its entirety, Bayview's Motion For Relief From Stay.

Dated: May 5, 2020



JEFFREY ARLEN SPINNER, ESQ. (JS2178)

SPINNER & SPINNER P.C.

Attorney for Debtor ROBERT F. KELLY

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CERTIFICATION OF SERVICE OF
OBJECTION TO MOTION FOR RELIEF FROM STAY

JEFFREY ARLEN SPINNER, an attorney duly admitted to practice law before the Courts of the State of New York and the United States District Court for the Eastern District of New York, affirms as follows, under penalty of perjury:

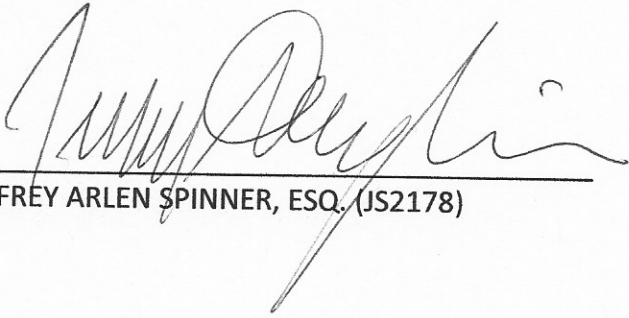
On May 6, 2020, I served a true and correct copy of the Objection To Motion For Relief From Stay, by enclosing the same in a securely sealed envelope with first class postage prepaid at the United States Post Office at Setauket, New York, addressed as follows:

Michael J. Macco, Esq.
Chapter 13 Trustee
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Islandia NY 11749

Jenelle Arnold Esq.
Aldridge Pite LLP
Attorneys for Bayview Loan Servicing LLC
4375 Jutland Drive
San Diego CA 92117

Bayview Loan Servicing LLC
4425 Ponce De Leon Boulevard
Coral Gables FL 33146

Dated: May 6, 2020



JEFFREY ARLEN SPINNER, ESQ. (JS2178)